

अण्डमान तथा
Andaman And



निकोबार राजपत्र
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अण्डमान तथा निकोबार प्रशासन
ANDAMAN AND NICOBAR ADMINISTRATION
सचिवालय/SECRETARIAT

NOTIFICATION

Port Blair, dated the 30th March, 2009.

No. 63/2009/F.No.3-178/99-Labour.—In pursuance of sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Act No.14 of 1947) read with Notification No.LR-1(59)/55 dated 13th December, 1955 of the Govt. of India, Ministry of Labour and A & N Administration's Notification No. 144/2008/F. No. 17-2/2007-Labour dated 7/10/2008, the Secretary (Lab), Andaman and Nicobar Administration, hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands, Port Blair against the reference made for adjudication vide Administration's Notification No. 3-178/99-Labour dated 6/12/1999 in the matter of an Industrial Dispute between the Divisional Forest Officer South Andaman and its workman, Shri Satyanarayana Mehar, DRM.

**IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT
ANDAMAN AND NICOBAR ISLANDS**

**Present: Mir Dara Sheko, Presiding Officer,
Labour Court, Port Blair**

I.D. Case No. 47 of 1999.

Shri Satyanarayana Mehar

Versus

... First Party

Divisional Forest Officer
South Andaman Division
Port Blair

... Second Party

Tuesday, the 17th day of February, 2009

JUDGEMENT

The I.D. case is an outcome of reference made by the Assistant Secretary (Labour) under the order of the Hon'ble Lieutenant Governor, A & N Islands vide Notification No. F. No.3-178/99-Labour dated 6/12/1999 for adjudication of the point as to whether the action of the Divisional Forest Officer, South Andaman in terminating the services of the First party Shri Satyanarayana Mehar, Daily Rated Mazdoor is legal and justified ? If not, what relief the workman is entitled too?

DECISION WITH REASONS

As per the demand application, the case of the First Party DRM namely Shri Satyanarayana Mehar in short is that he was working under the Second party, the Divisional Forest Officer, South Andaman, since 1989 to December 1997 with artificial break and thereby although he had completed continuation of the work as DRM for more than 240 days, he was not conferred with any regular status with a view to bypass the provision of section 25-B of the Industrial Dispute Act. On the contrary, without following the provision of section 25 B, 25 F, G, H, etc. the first party has been terminated and thereby he was not allowed any more to resume his work as the DRM and so by filing this demand application, the First party prayed for passing an award for his reinstatement in service with all back wages since his last date of termination/retrenchment.

The DFO equally contested the case filed W.O. and also submitted written argument with the prayer to reject the plea of the First party by dismissing the I.D. Case.

On scrutiny of the materials of record, I find that admittedly the First Party Satyanarayana Mehar had worked under the Second Party as Daily Rated Mazdoor and from the copies of muster roll it also appears that the access of the First Party as a DRM had been continued up to the month of October 1997. Although no other documentary proof is coming before me to show continuation of any further work by the First Party beyond the said period of October 1997, it is to be deemed as an admitted position that the first party was no more allowed to continue his work as DRM beyond November 1997 or even beyond December 1997. Since it was claim of the First Party that he had worked up to December 1997.

Be that as it may, the status of the First party was a daily rated mazdoor i.e. temporary or casual in nature, and it is his claim that without causing service of notice under section 25 F of the I.D. Act or without regularizing him in the service, he has been terminated/retrenchment from work.

The Second Party during course of argument only tried to impress upon me that continuous work for 240 days has not been completed by the First party and since the employment was casual or temporary in nature the plea of First Party cannot be accepted. I have already come across with the judgement of the Hon'ble five Judges Bench of the Supreme Court reported in (2006) 4 SCC page 1 (State of Karnataka – Versus Uma Devi and others), wherein the Hon'ble Apex court also by considering the provision of Labour Law pleased to observe as follows:-

“While directing that appointment, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for sometime and in some cases for a considerable length of time. It is not as if the person, who accepts an engagement either temporarily or casual in nature is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length since he might have been searching for some employment so as to eke out his livelihood and accept whatever he gets. But on that ground alone it would be appropriate to jettison the constitution scheme of appointment and to take the view that the person, who has temporarily or casually got employed should be directed to be continued permanently. By doing so it would be creating another mode of public appointment, which is not permissible”.

Further in Para 28, Their Lordships have been pleased to observed “ This court noticed that when the appointment was purely on adhoc and contractual basis for limited period on the expiry of the period, the right to remain in the post came to an end”. So the predominant view is

that appointments which are not made following due process or rules for appointment did not confer any right on the appointees, and that the court therefore cannot direct their absorptions or regularization or re-engagement or making them permanent.

So, even, if it is taken as granted that the first party had completed 240 days work by artificial break, nonetheless it is the caution of the Hon'ble Apex Court, so that the court, obviously of the present status remains careful in ensuring that they did not interfere unduly with the economic arrangement of its affairs to be dealt with by the State or its instrumentalities, or lend themselves the instruments to facilitate bypassing the constitutional and statutory mandates. So the court of the present status cannot impose on the State or its instrumentality a financial burden by insisting either on regularization or permanence in the employment, when the person/persons, employed temporarily is/are not needed permanently or regularly. Because a direction to give permanent employment to all those, who are being temporarily or casually employed may cause the financial burden on such institution to be so heavy that the institution itself may collapse under its own weight.

So the judgement of the Hon'ble Apex Court under reference being now the law of the land having binding effect upon everybody concerned within the country and the status of employment of the First party having been purely temporary and causal in nature and while he was allowed to work up to certain period, and even if First party had completed 240 days work still the right of the first party to work beyond that period had been lost until and unless it is going to be extended or reinstated by the management in his due official course, and for that reason there must not be any order of the court of the present status for putting the Second party into any financial compulsion. Obviously it would be at the option of the Second Party as to whether the First Party workman would be engaged any more for any further period or not, and therefore, to my view and being guided by the judgement of Hon'ble Apex Court, I hold that the first party cannot claim any relief as proposed only as a matter of right. It may be a repetition, but again to explicit myself, I find that if without any stipulated period of work the First party would have been terminated without service of notice under section 25 F of the I.D. Act, in that event, of course, the First Party DRM would have been equipped with a very good ground for moving the authority or legal institution for his reinstatement in the work and to remain there until and unless he would have been terminated / retrenchment by due process of law or with notice under section 25 F. But the sequence of the case being not so, i.e. there being no case or proof of termination of First party within any stipulated period of work, question of service of notice under section 25 F of I.D. Act does not arise in view of the decision of the Hon'ble Apex Court.

Therefore in view of Law discussed above, the termination of the First party workman cannot be designated as illegal and unjustified, because in the available situation the First Party can have no more legal expectation of any further notice under section 25 F of the I.D. Act and/or any re-employment order from the Second Party.

The point for which the reference is made is accordingly decided and the I.D. case is liable to be dismissed.

Hence, it is

ORDERED

that the I.D. case which has been initiated on the basis of the order of Hon'ble Lieutenant Governor, A & N Islands vide Notification No. F.No. 3-178/1999 (Labour) dated 6/12/1999 is hereby dismissed by holding that the action of the Divisional Forest Officer, South Andaman in terminating the service of Shri Satyanarayana Mehar, DRM is legal and justified and the First Party is not entitled to get any relief.

Issue copy of this award bearing the order of dismissal of the I.D. case to the Lieutenant Governor, Andaman & Nicobar Islands, Port Blair through the Assistant Secretary (Labour), A & N Administration, for information.

Dictated & corrected by me.

Sd/-
P.O.

Sd/-
(Mir Dara Sheko)
Presiding Officer
Labour Court
Andaman and Nicobar Islands
17.2.2009

By order of the Secretary (Labour)

Sd/-
(K.M. Lohidakshan)
Assistant Secretary (Labour).